

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

STATE OF TEXAS,
STATE OF MISSOURI,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR.,
in his official capacity as
President of the United States, *et al.*,

Defendants.

Civil Action No. 2:21-cv-00067-Z

DEFENDANTS' MOTION FOR LEAVE TO FILE SURREPLY

Defendants’ respectfully request leave to file a surreply in opposition to Plaintiffs’ motion to postpone the effective date of the October 29, 2021 memorandum ending the Migrant Protection Protocols (“MPP”). Plaintiffs’ Reply in support of that motion raises several new arguments in favor of a stay that were not raised in the initial motion, and thus Defendants have had no opportunity to respond to those arguments. These arguments include, among other things, the argument that courts routinely grant stays under 5 U.S.C. § 705 of agency actions that have already taken effect and that agency actions cannot take effect until published in the Federal Register.

This Court “generally refuses to consider arguments raised for the first time in a reply brief.” *CHM Indus., Inc. v. Structural & Steel Prods., Inc.*, No. 4:08-CV-454-Y, 2008 WL 4693385, at *4 (N.D. Tex. Oct. 24, 2008) (citations omitted). “When new arguments are raised, a court may strike the ... arguments or it may grant the opposing party leave to file a Sur-reply.” *White v. City of Red Oak, Texas*, No. 3:13-cv-4477-P, 2014 WL 11460871, at *1 (N.D. Tex. July 31, 2014) (citing *Penn. Gen. Ins. Co. v. Story*, No. 3:03-cv-0330-G, 2003 WL 21435511, at *1 (N.D. Tex. June 10, 2003)). Consistent with this principal, Defendants request either that the Court strike arguments raised for the first time in reply, or alternatively, grant Defendants leave to file a brief surreply limited to matters raised for the first time in Plaintiffs’ Reply. Defendants have attached their proposed surreply as an exhibit to this motion.

Dated: September 16, 2022

Respectfully submitted,

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Counsel for Defendants

CERTIFICATE OF CONFERENCE

I hereby certify that on September 16, 2022, I conferred with counsel for Plaintiffs about the relief requested in this motion. Plaintiffs oppose this motion.

/s/ Brian C. Ward
BRIAN C. WARD
U.S. Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2022, I electronically filed this motion with the Clerk of the Court for the United States District Court for the Northern District of Texas by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

/s/ Brian C. Ward
BRIAN C. WARD
U.S. Department of Justice